



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/689,926

10/20/2003

John Sarver

4869

24504

7590

02/19/2008

THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP
600 GALLERIA PARKWAY, S.E.
STE 1500
ATLANTA, GA 30339-5994

EXAMINER

ANTONIENKO, DEBRA L

ART UNIT

PAPER NUMBER

4194

MAIL DATE

DELIVERY MODE

02/19/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/689,926	Applicant(s) SARVER, JOHN	
	Examiner DEBRA ANTONIENKO	Art Unit 4194	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to the application filed on October 20, 2003.
2. Claims 1-54 are currently pending.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Examiner's Note: The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

4. Claims 1, 7, 25, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Hotels*, v36, n9, p34(2), September 2002: "Ritz-Carlton will debut in South America." (hereinafter referred to as *Hotels*) in view of *Pyle, David; Chadwell, Della; Emanuele, Paula; Journal of Property Management*, v64, n3, p36, May 1999: "High-Energy Synergy." (hereinafter referred to as *Pyle*).

Regarding Claims 1 and 25:

Hotels discloses the method substantially as claimed, using a glass or otherwise translucent material partition to separate said fitness center from said hotel lobby (paragraph 2).

Hotels does not explicitly disclose providing a location for said fitness center that is adjacent to and visible from said hotel lobby.

However, *Pyle* does disclose an exterior entrance next to the fitness club's major entrance (paragraph 8). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method described by *Hotels* to position the fitness center next to the lobby in order to create better traffic

Art Unit: 4194

flow and sight lines (paragraph 2). This would have provided effective advertising to guests in order to inform and encourage them of this beneficial amenity, which in turn would increase hotel revenue.

Regarding Claims 7 and 31:

Hotels further discloses wherein said fitness center contains a spa facility (paragraph 2).

5. Claims 2, 3, 8, 9, 26, 27, 32, 33, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Hotels* and *Pyle* and further in view of *Prior, James T.; New Jersey Business, v49, n8, p44, August 1, 2003: "EVERYONE INTO THE POOL!"* (hereinafter referred to as *Prior*).

Regarding Claims 2 and 26:

Prior discloses wherein said fitness center includes a cardiovascular and strength equipment room (paragraph 45). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method described by *Hotels* and *Pyle* with the teachings described by *Prior* to include a cardiovascular and strength equipment room in a fitness center in order to offer a variety of workout means to attract more guests, which in turn would increase hotel revenue.

Regarding Claims 3 and 27:

Prior further discloses wherein said fitness center includes a running track (paragraph 45). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method described by *Hotels* and *Pyle* with the teachings described by *Prior* to include a running track in a fitness center in order to offer a variety of workout means to attract more guests, which in turn would increase hotel revenue.

Regarding Claims 8 and 32:

Prior further discloses wherein said fitness center contains men and women's locker rooms (paragraph 15). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method described by *Hotels* and *Pyle* with the teachings described by *Prior* to include men and women's locker rooms in a fitness center in order to provide convenience and comfort to the guests.

Regarding Claims 9 and 33:

Prior further discloses wherein said locker rooms contain men and women's restroom facilities (paragraph 15). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method described by *Hotels* and *Pyle* with the teachings described by *Prior* to include men and women's restroom facilities in a fitness center in order to provide convenience and comfort to the guests.

Regarding Claim 50:

Prior further discloses wherein said running track is indoors (paragraph 45). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method described by *Hotels* and *Pyle* with the teachings described by *Prior* to include an indoor running track in a fitness center in order to offer a variety of workout means to attract more guests, which in turn would increase hotel revenue.

Art Unit: 4194

6. Claims 4, 5, 20, 22, 28, 29, 44, 46, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Hotels* and *Pyle* and further in view of *Valcke, Janci L.; East Bay Business Times, v3, n45, p9, July 20, 2001: "Marriott deal pumps up Leisure Sports."* (hereinafter referred to as *Valcke*).

Regarding Claims 4 and 28:

Valcke discloses wherein the fitness center includes a basketball court (paragraph 14). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method described by *Hotels* and *Pyle* with the teachings described by *Valcke* to include a basketball court in a fitness center in order to offer a variety of workout means to attract more guests, which in turn would increase hotel revenue.

Regarding Claims 5 and 29:

Valcke further discloses wherein said fitness center includes at least one group exercise room (paragraph 14). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method described by *Hotels* and *Pyle* with the teachings described by *Valcke* to include at least one group exercise room in a fitness center in order to offer a variety of workout means to attract more guests, which in turn would increase hotel revenue.

Regarding Claims 20 and 44:

Valcke further discloses providing a food and beverage bar adjacent to said hotel lobby and said fitness center (paragraph 9). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method described by *Hotels* and *Pyle* with the teachings described by *Valcke* to include a food and beverage bar in order to offer convenience and camaraderie to attract more guests, which in turn would increase hotel revenue.

Regarding Claims 22 and 46:

Valcke further discloses providing a retail area offering fitness apparel for sale. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method described by *Hotels* and *Pyle* with the teachings described by *Valcke* to include a retail area offering fitness apparel for sale in order to offer convenience and interest to attract more guests, which in turn would increase hotel revenue.

Regarding Claim 52:

Valcke further discloses wherein said basketball court is indoor (paragraph 14). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method described by *Hotels* and *Pyle* with the teachings described by *Valcke* to include an indoor basketball court in a fitness center in order to offer a variety of workout means to attract more guests, which in turn would increase hotel revenue.

7. Claims 6 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Hotels* and *Pyle* and further in view of *Meetings & Conventions, v38, n1, pSS47, January 2003: "Meetings."* (hereinafter referred to as *Meetings1*).

Art Unit: 4194

Regarding Claims 6 and 30:

Meetings1 discloses wherein said fitness center includes at least one independent exercise room (paragraph 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method described by *Hotels* and *Pyle* with the teachings described by *Meetings1* to include at least one independent exercise room in a fitness center in order to offer a variety of workout means to attract more guests, which in turn would increase hotel revenue.

8. Claims 10-14 and 34-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Hotels* and *Pyle* and further in view of *Prior*, *Valcke*, and *Meetings1*.

Regarding Claims 10 and 34:

See Claims 2, 3, 4, and 8 or Claims 26, 27, 28, and 32 respectively.

Regarding Claims 11 and 35:

See Claims 2, 3, 5, and 8 or Claims 26, 27, 29, and 32 respectively.

Regarding Claims 12 and 36:

See Claims 2, 3, 6, and 8 or Claims 26, 27, 30, and 32 respectively.

Regarding Claims 13 and 37:

See Claims 2, 3, 7, and 8 or Claims 26, 27, 31, and 32 respectively.

Regarding Claims 14 and 38:

See Claims 3, 4, 5, 6, 7, and 8 or Claims 27, 28, 29, 30, 31, and 32 respectively.

9. Claims 15, 17, 39, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Hotels* and *Pyle* and further in view of Ohmori et al., U.S. Patent Number US 7,021,421 B2 (hereinafter referred to as *Ohmori*).

Regarding Claims 15 and 39:

Ohmori teaches wherein said partition is made of Plexiglas (column 4, lines 23-35). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method described by *Hotels* and *Pyle* with the teachings described by *Ohmori* to use any of the available materials and resources, including Plexiglas, in order to achieve effective and esthetic design to attract more guests, which in turn would increase hotel revenue.

Regarding Claims 17 and 41:

Ohmori further teaches wherein said partition is made of a plastic material (column 4, lines 23-35). See Claim 15 and 39, respectively.

Art Unit: 4194

10. Claims 16, 18, 40, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Hotels* and *Pyle* and further in view of Kuipers et al., U.S. Patent Application Publication Number US 2002/0100236 A1 (hereinafter referred to as *Kuipers*).

Regarding Claims 16 and 40:

Kuipers teaches wherein the said partition is made of clear glass (paragraph [0057]). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method described by *Hotels* and *Pyle* with the teachings described by *Kuipers* to use any of the available materials and resources, including clear glass, in order to achieve effective and esthetic design to attract more guests, which in turn would increase hotel revenue.

Regarding Claims 18 and 42:

Kuipers further teaches wherein said partition is made of smoked glass (paragraph [0057]). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method described by *Hotels* and *Pyle* with the teachings described by *Kuipers* to use any of the available materials and resources, including smoked glass, in order to achieve effective and esthetic design to attract more guests, which in turn would increase hotel revenue.

11. Claims 19 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Hotels* and *Pyle* and further in view of Deugo et al., U.S. Patent Number US 5,159,793 (hereinafter referred to as *Deugo*).

Regarding Claims 19 and 43:

Deugo teaches wherein both opaque and non-opaque panels comprise said partition in whole or in part (column 6, lines 40-41). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method described by *Hotels* and *Pyle* with the teachings described by *Deugo* to use any of the available materials and resources, including opaque and non-opaque panels in order to achieve effective and esthetic design to attract more guests, which in turn would increase hotel revenue.

12. Claims 21 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Hotels* and *Pyle* and in view of *Prior, Valcke, and Meetings1*, and further in view of *Meetings & Conventions, v38, n10, p79, September 2003: "The most important meeting of the day: how to plan a better breakfast."* (hereinafter referred to as *Meetings2*).

Art Unit: 4194

Regarding Claims 21 and 45:

Meetings2 discloses providing a smoothie bar adjacent to said hotel lobby and said fitness center (paragraph 27). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method described by *Hotels* and *Pyle* in view of *Prior, Valcke, and Meetings1* with the teachings described by *Meetings2* to include a smoothie bar in order to offer convenience and camaraderie to attract more guests, which in turn would increase hotel revenue.

13. Claims 23 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Hotels and *Pyle* and in view of *Prior, Valcke, and Meetings1*, and further in view of

Linstedt, Sharon; Buffalo News (Buffalo, NY, US), pB9, June 27, 1998: "Buffalo Athletic Club to Open Center in Orchard Park." (hereinafter referred to as *Linstedt*).

Regarding Claims 23 and 47:

Linstedt discloses providing a retail area offering personal exercise equipment for sale (paragraph 11). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method described by *Hotels* and *Pyle* in view of *Prior, Valcke, and Meetings1* with the teachings described by *Linstedt* to include a retail area offering personal exercise equipment for sale in order to offer convenience and interest to attract more guests, which in turn would increase hotel revenue.

14. Claims 24 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Hotels and *Pyle* and in view of *Prior, Valcke, Meetings1, and Meetings2*.

Regarding Claims 24 and 48:

See Claims 20 and 23 or Claims 44 and 47 respectively.

15. Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Hotels* and

Pyle and in view of *Prior* and further in view of *Jarman, Max; Arizona Republic (Phoenix,*

AZ, US), pE1, December 19, 1997: "Apartment Plan Keeps Golf Course." (hereinafter referred to as *Jarman*).

Regarding Claim 49:

Jarman discloses wherein said running track is outdoors (paragraph 17). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method described by *Hotels* and *Pyle* in view of *Prior* with the teachings described by *Jarman* to include an outdoor running track in a fitness center in order to offer a variety of workout means to attract more guests, which in turn would increase hotel revenue.

16. Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Hotels and Pyle* and in view of *Valcke*, and further in view of *Stogner, Amy; Boulder County Business Report, v20, n6, p2B, March 9, 2001: "Renovated Regal becoming Millennium."* (hereinafter referred to as *Stogner*).

Regarding Claim 51:

Stogner discloses wherein said basketball court is outdoors (paragraph 6). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method described by *Hotels and Pyle* in view of *Valcke* with the teachings described by *Stogner* to include an outdoor basketball court in a fitness center in order to offer a variety of workout means to attract more guests, which in turn would increase hotel revenue.

17. Claims 53 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Hotels and Pyle* and further in view of *Weller, U.S. Patent Number 3,837,132* (hereinafter referred to as *Weller*).

Regarding Claims 53 and 54:

Weller teaches wherein said partition is made of any material that is translucent in whole or in part, and that provides a sound barrier (column 1, lines 47-53 and column 7, lines 49-50). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method described by *Hotels and Pyle* with the teachings of *Weller* to use any of the available materials and resources, including any material that is translucent in whole or in part, and that provides a sound barrier in order to achieve a practical and effective environment to attract more guests, which in turn would increase hotel revenue.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEBRA ANTONIENKO whose telephone number is (571)270-3601. The examiner can normally be reached on Monday through Friday, 6:30 AM to 4:00 PM, EST, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Kyle can be reached on 571-272-6746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Debra Antonienko/
Examiner, Art Unit 4194
02/06/2008

/Charles R. Kyle/
Supervisory Patent Examiner, Art Unit 4194